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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 NETWORK APPLIANCE, INC.,

15 Plaintiff - Counterclaim  
16 Defendant,

17 v.

18 SUN MICROSYSTEMS, INC.,

19 Defendant -  
20 Counterclaimant.

CASE NO. 3:07-CV-06053 EDL

**SUN MICROSYSTEMS, INC.'S *EX PARTE*  
APPLICATION TO SHORTEN TIME FOR  
HEARING ON SUN'S MOTION FOR  
PARTIAL STAY OF THE CASE PENDING  
REEXAMINATION OF UNITED STATES  
PATENT NOS. 5,819,292, 6,857,001 AND  
6,892,211**

**Date: TBD  
Time: TBD  
Courtroom: E, 15th Floor  
Hon. Elizabeth D. Laporte**

22 **I. INTRODUCTION**

23 Pursuant to Northern District of California Local Rules 6-1(b), 6-3 and 7-10, Sun  
24 Microsystems, Inc. ("Sun") requests that the Court shorten time to hear Sun's Motion For Partial  
25 Stay Of The Case Pending Reexamination Of United States Patent Nos. 5,819,292, 6,857,001 and  
26 6,892,211 ("Motion to Stay").

27 The issue here is simple. The United States Patent and Trademark Office ("PTO")  
28

1 recently placed three of Network Appliance, Inc.'s ("NetApp") seven patents-in-suit into  
 2 reexamination: United States Patent Nos. 5,819,292, 6,857,001 and 6,892,211 (collectively, "the  
 3 Reexam Patents"). The PTO also already issued an Office Action rejecting all 63 claims of one  
 4 Reexam Patent, finding that ten separate pieces of prior art each invalidate the patent and found  
 5 that substantial new questions of patentability exist as to the other two patents. As such, none of  
 6 the three Reexam Patents likely will survive reexamination. In an effort to streamline the case  
 7 and considerably reduce the amount of time, resources and money that otherwise would need to  
 8 be spent by the Court and the parties, Sun requests a motion for partial stay of the case pending  
 9 reexamination of the Reexam Patents and further requests that this motion be heard on an  
 10 expedited basis.

11 If Sun's Motion to Stay is heard as a regularly noticed motion, the hearing date would be  
 12 set for May 20, 2008. Between now and May 20, 2008, the parties will have met-and-conferred  
 13 regarding the scope of claim terms (there currently are 129 claim terms at issue), exchanged their  
 14 preliminary proposed claim constructions and extrinsic evidence and prepared the Joint Claim  
 15 Construction and Prehearing Statement. In other words, the parties will have devoted substantial  
 16 time and money discussing the terms of the Reexam Patents if it is ultimately decided by this  
 17 Court that the case should be stayed with respect to the three Reexam Patents. Sun's request for  
 18 an expedited briefing schedule is requested for the sole purpose of streamlining the parties' claim  
 19 construction discussions and ultimate filings with the Court.

## 20 **II. MEET AND CONFER EFFORTS**

21 On April 9, 2008, Sun asked whether NetApp would stipulate to a stay of the case with  
 22 respect to the three Reexam Patents. (Declaration of Christine Corbett In Supp. of *Ex Parte*  
 23 Motion ("Corbett Decl."), ¶ 2, Ex. A.) If NetApp would not stipulate to a stay of the case, Sun  
 24 also asked whether NetApp would stipulate to having Sun's Motion to Stay heard on an expedited  
 25 basis. (*Id.*) Over the next few days, the parties exchanged correspondence regarding the scope of  
 26 the stay. (Corbett Decl., ¶¶ 3-4, Exs. B-C.) On April 14, 2008, NetApp indicated that it would  
 27 not consent to a stay of the litigation with respect to the Reexam Patents nor would it agree to an  
 28 expedited briefing schedule on the Motion to Stay. (Corbett Decl., ¶ 5, Ex. D.)

### 1 III. LEGAL ARGUMENT

2 Pursuant to Northern District of California Local Rule 6-3 and the Court's inherent power  
 3 to manage cases in the interests of justice, Sun respectfully requests that the Court grant its  
 4 motion to shorten time on its Motion to Stay. As set forth in the accompanying Notice of Motion  
 5 and Memorandum of Points and Authorities in support of Sun's Motion to Stay, Sun is seeking an  
 6 order from the Court staying this case with respect to the Reexam Patents pending completion of  
 7 the PTO's reexamination of these three patents. NetApp opposes Sun's request for a partial stay,  
 8 arguing that the "judicial system provides the most efficient, reliable way to resolve this dispute."  
 9 (Corbett Decl., ¶5, Ex. D.) However, given that the issue of invalidity will not be finally decided  
 10 until the PTO completes its reexamination proceedings, the most efficient way to resolve this  
 11 dispute would be to allow the PTO to complete its dispositive decision-making on this issue. *See*  
 12 *In re Translogic Tech., Inc.*, 504 F.3d 1249 (Fed. Cir. 2007).

13 Sun will be prejudiced if it is forced to notice this motion as a regularly noticed motion  
 14 (with a hearing date of May 20, 2008). Last week, the parties exchanged lists of proposed terms  
 15 for construction. Together, the parties identified twelve (12) terms of the Reexam Patents that  
 16 would require construction. Between now and May 20, the parties will meet-and-confer,  
 17 exchange preliminary proposed claim construction and extrinsic evidence and prepare a Joint  
 18 Claim Construction and Prehearing Statement regarding these twelve terms (among the 129 that  
 19 are at issue). If the Court grants Sun's Motion to Stay on an expedited schedule, the parties and  
 20 ultimately the Court will not have to address these claims terms at this time (or at all).

### 21 IV. PROPOSED BRIEFING AND HEARING SCHEDULE

22 Sun proposes the following briefing schedule with respect to its Motion to Stay. Sun's  
 23 Motion to Stay is deemed filed as of April 15, 2008. NetApp shall file its opposition, if any, by  
 24 5:00 p.m. on April 24, 2008. Sun shall file its reply by 5:00 p.m on May 1, 2008. Sun also  
 25 respectfully requests that the Court hear its Motion to Stay on May 6, 2008 at 9:00 a.m. This  
 26 schedule provides both NetApp and the Court with sufficient time to evaluate, respond and  
 27 consider the papers on file.

1 **V. CONCLUSION**

2 Based on the foregoing, Sun respectfully requests that the Court issue an Order expediting  
3 briefing and hearing on Sun's Motion to Stay.

4  
5 Dated: April 15, 2008.

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7  
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